



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2022-0329; FRL-9699-01-R7]

Air Plan Approval; Missouri; Start-Up, Shutdown, and Malfunction Conditions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Missouri State Implementation Plan (SIP) received on February 11, 2020. In the submission, Missouri requests to revise a regulation related to reporting of start-up, shutdown, and malfunction (SSM) events. The revisions to this rule include adding incorporations by reference to other State rules, including definitions specific to the rule and making administrative wording changes. These revisions do not impact the stringency of the SIP or air quality. Approval of these revisions will ensure consistency between State and federally approved rules.

DATES: Comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: You may send comments, identified by Docket ID No. EPA-R07-OAR-2022-0329 to <https://www.regulations.gov>. Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received will be posted without change to <https://www.regulations.gov/>, including

any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the "Written Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Allie Donohue, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551-7986; email address: donohue.allie@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" refer to the EPA.

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I. Written Comments

Submit your comments, identified by Docket ID No. EPA-R07-OAR-2022-0329, at <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to

make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

II. What is Being Addressed in this Document?

The EPA is proposing to approve Missouri's revisions to 10 Code of State Regulation (CSR) 10-6.050, *Start-Up, Shutdown, and Malfunction Conditions*, which relate to reporting of SSM events in the Missouri SIP. These provisions in the SIP require the reporting of SSM events to the Missouri Department of Natural Resources (MoDNR). Specifically, the provisions set the time by which such notification must occur, define what constitutes an SSM event, and establish the required contents of the written report including but not limited to measures taken to mitigate the extent and duration of the excess emissions, measures taken to remedy the situation which caused the excess emissions and the measures taken or planned to prevent the recurrence of these situations.

The EPA received the MoDNR's SIP revision submission on February 11, 2020. The EPA's full analysis of the revisions can be found in the technical support document (TSD) included in this docket.

In 10 CSR 10-6.050 Section (2) Definitions, the State

incorporated definitions for "excess emissions" into subsection (A), "malfunction" into subsection (B), "shutdown" into subsection (C), and start-up into subsection (D). The definitions in the revision are the same as the definitions in the SIP approved 10 CSR 10-6.020. The revisions to Section (2) Definitions also move language about definitions not included in 10 CSR 10-6.050 into subsection (E). Because the language was already SIP-approved, and because the definitions relate to requirements related to informational reporting on SSM events, EPA finds that these revisions do not affect the stringency of the SIP. The rule revisions also include minor word changes, which are administrative in nature and do not affect the stringency of the SIP.

EPA finds that approving these revisions into the Missouri SIP is consistent with EPA's policy as further described in Section III.

III. Background

On February 22, 2013, the EPA issued a *Federal Register* notice of proposed rulemaking outlining EPA's policy at the time with respect to SIP provisions related to periods of SSM. EPA analyzed specific SSM SIP provisions and explained how each one either did or did not comply with the Clean Air Act (CAA) with regard to excess emission events.¹ EPA finalized this proposed action on June 12, 2015, in "State

¹ State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction, 78 FR 12460 (Feb. 22, 2013).

Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction" (80 FR 33839, June 12, 2015), hereafter referred to as the "2015 SSM SIP Action."

As described in section IX.H.3 of the February 2013 proposal, EPA reviewed the Missouri rule at issue in this action because it was included in a Sierra Club petition.² Sierra Club argued that this Missouri provision gave State personnel authority to determine where enforcement action should be taken based on information a source submits about excess emissions resulting from a malfunction, start-up, or shutdown. EPA denied the petition on this provision and affirmatively found the provision to be consistent with the 2015 policy "on the basis that the provision is on its face clearly applicable only to Missouri state enforcement personnel and that the provision thus could not reasonably be read by a court to foreclose enforcement by the EPA or through a citizen suit where Missouri state personnel elect to exercise enforcement discretion." As a result, Missouri rule, 10 Code of State Regulation (CSR) 10-6.050, *Start-Up, Shutdown, and Malfunction Conditions*, was not included in the

² Petition to Find Inadequate and Correct Several State Implementation Plans under section 110 of the Clean Air Act Due to Startup, Shutdown, Malfunction, and/or Maintenance Provisions (June 30, 2011).

2015 SSM SIP Call. Because the Missouri submittal does not substantively alter this rule, EPA's previous conclusions relating to this provision's compliance with EPA's SSM policy remain unchanged.

IV. Have the Requirements for Approval of a SIP Revision Been Met?

The State submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on this SIP revision from June 3, 2019 to July 3, 2019 and received 6 comments. Five comments were from industry groups and one comment was from EPA. The industry comments all related to reporting excess emissions as soon as possible. Ultimately, the State opted not to include additional language to this effect and maintained that notification must occur within two days. The EPA comment letter indicated that EPA did not have comments on the rule changes. Therefore, the State adequately addressed each comment. In addition, as explained above, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

V. What Action is the EPA Proposing?

The EPA is proposing to approve Missouri's revisions to 10 CSR 10-6.050, *Start-Up, Shutdown, and Malfunction Conditions*, which relate to reporting of SSM events in the Missouri SIP as submitted to EPA on February 11, 2020. We are soliciting

comments on this proposed action. Because this rule was previously approved into Missouri's SIP, we are soliciting comments solely on the proposed revisions to the rule and not on the existing text that is approved into Missouri's SIP. Final rulemaking will occur after consideration of any comments.

VI. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the Missouri Regulations described in Section II of this preamble and set forth in the proposed amendments to 40 CFR part 52 below. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VII. Statutory and Executive Order Reviews

Under the Clean Air Act (CAA), the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal

requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 31, 2022.

Meghan A. McCollister,
Regional Administrator,
Region 7.

For the reasons stated in the preamble, the EPA proposes to amend 40 CFR part 52 as set forth below:

PART 52--APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA-Missouri

2. In §52.1320, the table in paragraph (c) is amended by revising the entry "10-6.050" to read as follows:

§52.870 Identification of plan.

* * * * *

(c) * * *

EPA-Approved Missouri Regulations

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
* * * * *				
Chapter 6--Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
* * * * *				
10-6.050	Start-Up, Shutdown, and Malfunction Conditions	1/30/2020	[Date of publication of the final rule in the Federal Register], [Federal Register citation of the final rule]	
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